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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

CREIGHTON TAKATA, individually and on	)	
behalf of all others similarly situated,	)	Civil Action No.: 18-2293 (FLW)(ZNQ)
	)	
Plaintiff,	)	Hon. Freda L. Wolfson
	)	
v.	)	
	)	
RIOT BLOCKCHAIN, INC. f/k/a BIOPTIX,	)	<b>MEMORANDUM OF LAW IN</b>
INC., JOHN O'ROURKE, JEFFREY	)	<b>SUPPORT OF MOTION OF</b>
MCGONEGAL, BARRY HONIG,	)	<b>DEFENDANT MIKE DAI FOR LEAVE</b>
CATHERINE DEFRANCESCO, MICHAEL	)	<b>TO FILE A SUR-REPLY IN SUPPORT</b>
BEEGHLEY, JOHN STETSON, MARK	)	<b>OF HIS MOTION TO DISMISS LEAD</b>
GROSSMAN, ANDREW KAPLAN, MIKE	)	<b>PLAINTIFF'S CORRECTED</b>
DAI, JASON LES and ERIC SO,	)	<b>CONSOLIDATED AMENDED</b>
	)	<b>COMPLAINT</b>
Defendants.	)	

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**TABLE OF AUTHORITIES**

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**Cases**

<i>Levey v. Brownstone Inv. Grp., LLC</i> , Civil Action No. 11-395 (ES), 2013 U.S. Dist. LEXIS 90178 (D.N.J. June 26, 2013), <i>aff'd</i> , 590 F. App'x 132 (3d Cir. 2014) .....	1
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Defendant Mike Dai respectfully requests that the Court enter an order permitting him to file a sur-reply in support of his previously filed Memorandum in Support of Motion to Dismiss the Amended Corrected Complaint (“Amended Complaint”) for the reasons set forth below.

Mr. Dai requests leave to file a sur-reply because it was not until after January 20, 2020—long after briefing was completed on his Motion to Dismiss and those of other Defendants—that Defendant Riot Blockchain, Inc. (the “Company”) was informed by the staff of the Securities and Exchange Commission (“SEC”) that the SEC had determined not to recommend the filing of an enforcement action against the Company. That decision is a significant event that is material to Mr. Dai’s Motion to Dismiss. The Amended Complaint is built on, and relies in significant part on, the existence of the SEC investigation as something of a substitute for detailing the facts required to support a properly pleaded securities class action complaint. The Amended Complaint states, for example that “Recent disclosure shows that a cloud still hangs over the company so long as the SEC investigation continues.” Pl.’s Am. Compl. ¶ 393 (Dkt. No. 73) (*internal citations omitted*) and that the investigation is “an ominous event for Riot Blockchain.” *Id.*

In view of this claim and others regarding the SEC investigation in the Amended Complaint, *see, e.g.*, Pl.’s Am. Compl. ¶¶ 350, 366, 387, 393 (Dkt. No. 173), the fact that the staff of the SEC will not recommend an enforcement action against the Company is highly significant and should be available to the Court as the various motions to dismiss are considered.

As recently noted in the case of *Levey v. Brownstone Inv. Grp., LLC*, if a “new issue” arises that should be addressed by the court in the interest of completeness, then that new issue may be addressed via sur-reply. No. 11-395 (ES), 2013 U.S. Dist. LEXIS 90178, at \*8 (D.N.J. June 26, 2013), *aff’d*, 590 F. App’x 132 (3d Cir. 2014). The SEC’s decision not to proceed

constitutes a new issue of this kind. Accordingly, Mr. Dai respectfully requests leave to file a brief sur-reply addressing the termination of the SEC investigation. Permitting the sur-reply will give the Court a complete record from which to rule on the Motion to Dismiss.

Wherefore, for the foregoing reasons, Mr. Dai requests that the Court grant his request to file a sur-reply dated February 19, 2020. A proposed form of Order is also attached.

DATED: February 19, 2020,

Respectfully submitted,

DORSEY & WHITNEY LLP

By: /s/ Laura M. Lestrade

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